

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application )

of )

WAI'OLA O MOLOKA'I, INC. )

For review and approval of rate )  
increases; revised rate schedules; )  
and revised rules. )  
\_\_\_\_\_ )

Docket No. 2009-0049

FILED

2009 OCT 29 A 11:27

PUBLIC UTILITIES  
COMMISSION

STIPULATED PROCEDURAL ORDER

EXHIBIT A

and

CERTIFICATE OF SERVICE

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application	)	
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	)	Docket No. 2009-0049
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For review and approval of rate	)	
increases; revised rate schedules;	)	
and revised rules.	)	
_____	)	

**STIPULATION FOR PROCEDURAL ORDER**

WAI'OLA O MOLOKA'I, INC. ("WOM" or "Applicant"), a Hawaii corporation, the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS (the "Consumer Advocate"), the COUNTY OF MAUI ("County"), STAND FOR WATER ("SFW"), and MOLOKAI PROPERTIES LIMITED ("MPL"), by and through their respective attorneys or representatives, do hereby stipulate to the following provisions of this Stipulated Procedural Order as mutually acceptable to each.

ACCORDINGLY, IT IS ORDERED that the following Statement of Issues, Schedule of Proceedings, and procedures shall be utilized in this docket:

I.

**STATEMENT OF THE ISSUES**

The issues in this case are:

1. Are WOM's proposed rate increases just and reasonable?
  - a. Are the proposed tariffs, rates and charges just and reasonable and

**based on accurate expenses that are appropriately booked and accounted for?**

- b. Are WOM's expenses properly included in the rate base?**
- c. Are the revenue forecasts for the July 1, 2009 to June 30, 2010 Test Year ("Test Year") at present rates and proposed rates just and reasonable?**
- d. Are the projected operating expenses for the Test Year just and reasonable and based on accurate data that is properly booked and accounted for, and properly included in the rate base?**
- e. Is the projected rate base for the Test Year just and reasonable, are the properties included in the rate base used or useful for public utility purposes, and are the properties properly booked and accounted for, and properly included in the rate base?**
- f. Is the rate of return requested fair?**
- g. Whether WOM's financials adequately reflect the income of WOM and if not, whether, to adequately reflect the income of WOM, the commission should distribute, apportion, or allocate gross income, deductions, credits, or allowances between or among entities that own or control WOM, directly or indirectly.**
- h. Whether any contracts between WOM and affiliated companies entered into after July 1, 1988 are valid and effective for purposes of HRS § 269-19.5, whether the terms and conditions of such contracts are unreasonable or otherwise contrary to the public interest, and whether any payments made by WOM pursuant to the**

contracts or transactions are unreasonable and should be excluded by the commission for ratemaking purposes.

- i. Whether WOM should receive a rate increase given the manner in which WOM's issued and outstanding voting stock is held and whether PUC approval had been obtained.
- k. Is the proposed rate increase just and reasonable if WOM has been and/or continues to be in violation of HRS Ch. 343, the Safe Drinking Water Act codified at HRS Ch. 340E, and other applicable state and federal law, or if the physical condition of WOM's distribution infrastructure poses safety risks that are not accounted for in WOM's record of compliance with state and federal law?
- l. Should the proposed rate increase be conditioned upon legally enforceable obligations of WOM that ensure the reliable delivery of potable water in the long term, given WOM's publicly announced intention to cease operating the utility?
- m. Whether WOM and/or its affiliates is responsible for costs incurred to cure breaches of any covenants or agreements with third parties and may not pass such costs on to ratepayers in any form.
- n. Whether WOM and/or its affiliates is responsible for costs of long-overdue maintenance and repair of its infrastructure and may not pass such costs on to ratepayers in any form.
- o. Whether the value of any quid pro quo received by WOM in consideration of any agreement or covenant made by WOM or its

affiliates is appropriately accounted for in the determination of WOM's income?

- p. Whether WOM ratepayers should receive refunds or credits for past payments to WOM to the extent it is determined that the emergency rate hike granted in 2008 was excessive or inappropriate.
- q. Whether the proposed rate increase is just and reasonable in light of any excessive unaccounted-for water losses incurred by MOM, resulting from inadequate maintenance and repair of its physical infrastructure ?
- r. Whether WOM rate payers should pay higher rates to compensate for reduced billings to Molokai Ranch Properties following its decision to cease its other operations on Molokai Ranch lands.

## II.

### SCHEDULE OF PROCEEDINGS

The parties shall adhere to the schedule of proceedings set forth in the Stipulated Regulatory Schedule attached hereto as Exhibit "A." Notwithstanding the above, the parties may amend the Stipulated Regulatory Schedule (aka, Schedule of Proceedings) as may be agreed in writing from time to time; provided that the requesting party or parties receive the Commission's approval in accordance with Hawaii Administrative Rules ("HAR") § 6-61-23, to the extent applicable. However, the intent of the parties in

agreeing to a schedule at this time is to promote the efficient and cost-effective allocation of resources. Therefore, any changes to the schedule should be proposed only when there is an urgency or substantial competing need that cannot be reasonably accommodated without a change.

### III.

#### REQUESTS FOR INFORMATION

A party to this proceeding may submit information requests to another party within the time schedule specified in this Stipulated Procedural Order. If a party is unable to provide the information requested within the prescribed time period, it should so indicate to the inquiring party as soon as possible. The parties shall then endeavor to agree upon a later date for submission of the requested information. If the parties are unable to agree, the inquiring party may seek approval from the Commission and make a showing of good cause. It is then within the Commission's discretion to allow additional information requests.

In lieu of responses to information requests that would require the reproduction of voluminous documents or materials (e.g., documents over 50 pages), the documents or materials may be made available for reasonable inspection and copying at a mutually agreeable designated location and time. In the event such information is available on computer diskette or compact disc, the party responding to the information request may make the diskette or compact disc available to the other party and the Commission. A party shall not be required, in a response to an information request, to provide data that is/are already on file with the Commission or otherwise part of the public record, or that may be stipulated to pursuant to Part VI, infra. The responding party shall, in lieu of

production of a document in the public record, include in its response to the information request an identification of the document with reasonable specificity sufficient to enable the requesting party to locate and copy the document. In addition, a party shall not be required, in a response to an information request, to make computations, compute ratios, reclassify, trend, calculate, or otherwise rework data contained in its files or records.

A party may object to responding to an information request that it deems to be irrelevant, immaterial, unduly burdensome, onerous or repetitious, and, without waiving its objection(s) as to the admissibility of the information at any evidentiary hearing, shall produce the information responsive to the information request. A party may also object to responding to an information request where the response contains information claimed to be privileged or subject to protection (confidential information). If a party claims that information requested is confidential, and withholds production of all or a portion of such confidential information, the party shall move for a protective order pursuant to HAR § 6-61-50. The moving party shall also: (1) provide information reasonably sufficient to identify the confidential information withheld from the response, without disclosing privileged or protected information; (2) state the basis for withholding the confidential information (including, but not limited to, the specific privilege applicable or protection claimed for the confidential information and the specific harm that would befall the party if the information were disclosed); and (3) state whether the party is willing to provide the confidential information pursuant to the protective order governing this docket.

A party seeking production of documents notwithstanding a party's claim of

relevance, materiality or confidentiality, may file a motion to compel production with the Commission.

The responses of each party to information requests shall adhere to a uniform system of numbering agreed upon by the parties. For example, the first information request submitted by the Consumer Advocate in this docket shall be referred to and designated as "CA-IR-1," and a response to this information request shall be referred to and designated as "Response to CA-IR-1."

Each response shall be provided on a separate page and shall recite the entire question asked and set forth the response and/or reference the attached responsive document, indicating the name of the respondent for each response.

#### IV.

#### WITNESSES

Witnesses shall submit pre-filed written testimony and exhibits and shall be made available for cross-examination at the hearing. Witnesses shall file with their pre-filed written testimony and exhibits, the work papers used in preparing the evidence they sponsor at the hearing. Witnesses will not be permitted to read pre-filed testimony at the hearings.

In the oral presentation of the testimony, each witness may give a brief summary of the testimony and exhibits and shall summarize the issues raised by such testimony. Each witness shall be subject to cross-examination for both direct and rebuttal testimony and exhibits.

The parties in this case should cooperate to accommodate the schedules of any mainland witnesses and should inform the Commission in advance of any scheduling



difficulties of mainland witnesses. If any party has any objection to scheduling a witness in advance of other witnesses, the party should make a timely objection to the Commission.

## V.

### FORM OF PREPARED TESTIMONY

All prepared testimony, including text and exhibits, shall be prepared in written form on 8-1/2" x 11" paper with line numbers, and shall be served on the dates designated in the Schedule of Proceedings.

Each party shall be permitted to follow its own numbering system for written testimony and exhibits, provided that the numbering system utilized is consistent and is clearly understandable. Each document of more than one page shall be consecutively numbered. Each party shall prepare a list of its exhibits by exhibit numbers and titles.

The parties shall be permitted to make revisions to exhibits after the designated dates appearing in the Schedule of Proceedings. Revisions shall bear appropriate revision dates. However, revisions or additions that do more than correct typographical errors, update facts, or give numerical comparisons of the positions taken by the parties, shall not be submitted.

Generally, exhibits should include appropriate footnotes or narratives in the exhibits or the related testimony setting forth the sources of the information used and explaining the methods employed in making statistical compilations or estimates.

## VI.

### MATTERS OF PUBLIC RECORD

To reduce unnecessary reproduction of documents and to facilitate these proceedings, identified matters of public record, such as reports that WOM has filed with the Commission, published scientific or economic statistical data, material and textbooks, technical or industry journals relating to utility matters, and specified parts of the record in previous Commission dockets shall be admissible in this proceeding without the necessity of reproducing each document; provided that the document to be admitted is clearly identified by reference to the place of publication, file or docket number, and the identified document is available for inspection by the Commission and the parties; and further provided that any party has the right to explain, qualify or conduct examination with respect to the identified document. The Commission can rule on whether the identified document can be admitted into evidence when a party proffers such document for admission as evidence in this case.

From time to time, the parties may enter into stipulations that such documents, or any portion of such documents, may be introduced into evidence in this case.

## VII.

### COPIES OF TESTIMONIES, EXHIBITS AND INFORMATION REQUESTS

#### 1. Testimonies and Exhibits:

Public Utilities Commission  
465 South King Street  
First Floor  
Honolulu, HI 96813

Original plus 8 copies

Division of Consumer Advocacy  
335 Merchant Street  
Room 326

3 copies

Honolulu, HI 96813  
Facsimile Number: 586-2780

Michael H. Lau, Esq. 1 copy  
Yvonne Y. Izu, Esq.  
Sandra L. Wilhide, Esq.  
Moriwara Lau & Fong LLP  
Davies Pacific Center  
841 Bishop Street, Suite 400  
Honolulu, HI 96813  
Facsimile Number: 566-0800

Margery S. Bronster, Esq. 1 copy  
Jeannette H. Castagnetti, Esq.  
Bronster Hoshibata  
2300 Pauahi Tower  
1003 Bishop Street  
Honolulu, HI 96813  
Facsimile Number: 599-1881

Timothy Brunnert\* 1 copy  
President  
Stand For Water  
P. O. Box 71  
Maunaloa, HI 96770  
Facsimile Number: (808) 552-0003

Andrew V. Beaman, Esq. 1 copy  
Chun Kerr Dodd Beaman & Wong, LLLP  
Topa Financial Center  
Fort Street Tower  
745 Fort Street, 9<sup>th</sup> Floor  
Honolulu, HI 96813  
Facsimile Number: 536-5869

**\* To be substituted once counsel is selected.**

**2. Information Requests and Responses:**

Public Utilities Commission Original plus 8 copies  
465 South King Street  
First Floor  
Honolulu, HI 96813

Division of Consumer Advocacy 3 copies  
335 Merchant Street

Room 326  
Honolulu, HI 96813  
Facsimile Number: 586-2780

Michael H. Lau, Esq. 1 copy  
Yvonne Y. Izu, Esq.  
Sandra L. Wilhide, Esq.  
Moriwara Lau & Fong LLP  
Davies Pacific Center  
841 Bishop Street, Suite 400  
Honolulu, HI 96813  
Facsimile Number: 566-0800

Margery S. Bronster, Esq. 1 copy  
Jeannette H. Castagnetti, Esq.  
Bronster Hoshibata  
2300 Pauahi Tower  
1003 Bishop Street  
Honolulu, HI 96813  
Facsimile Number: 599-1881

Timothy Brunnert\* 1 copy  
President  
Stand For Water  
P. O. Box 71  
Maunaloa, HI 96770  
Facsimile Number: (808) 552-0003

Andrew V. Beaman, Esq. 1 copy  
Chun Kerr Dodd Beaman & Wong, LLLP  
Topa Financial Center  
Fort Street Tower  
745 Fort Street, 9<sup>th</sup> Floor  
Honolulu, HI 96813  
Facsimile Number: 536-5869

**\* To be substituted once counsel is selected.**

All pleadings, briefs and other documents required to be filed with the Commission shall be filed at the office of the Commission in Honolulu within the time limit prescribed pursuant to HAR § 6-61-15.

Copies of all filings, information requests and information request responses should be sent to the other parties by hand delivery or U.S. mail. In addition, if

available, all parties shall provide copies of their filings, information requests and information request responses to the other parties via diskette, compact disc or e-mail in a standard electronic format that is readily available by the parties.

#### VIII.

##### ORDER OF EXAMINATION

Consistent with the requirements set forth under HAR § 6-61-31, WOM shall open with its direct case. MPL's direct case shall be presented after WOM's direct case. The Consumer Advocate's direct case shall be presented after MPL's direct case. The County, SFW and MPL shall present their direct case following the Consumer Advocate. WOM shall close with its rebuttal case.

Examination of any witness shall be limited to one attorney for a party. Re-direct or re-cross examination shall be limited to the extent of material covered in redirect or re-cross examination unless otherwise permitted by the Commission.

#### IX.

##### COMMUNICATIONS

HAR § 6-61-29 concerning ex parte communications is applicable to any communications between a party and the Commission. However, the parties may communicate with Commission counsel through their own counsel or designated official only as to matters of process and procedure.

Communications between the parties should either be through counsel or through designated representatives. All pleadings, papers, and other documents filed in this proceeding shall be served on the opposing party as provided in Article VII above.

All motions, supporting memoranda, briefs, and the like shall also be served on opposing counsel.

X.

GENERAL

The foregoing procedures shall be applied in a manner consistent with the orderly conduct of this docket.

This Stipulated Procedural Order shall control the subsequent course of these proceedings, unless modified by the parties in writing and approved by the Commission, or upon the Commission's own motion. This Stipulated Procedural Order may be executed by the parties in counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument. The parties may execute this Stipulated Procedural Order by facsimile or electronic mail for initial submission to the Commission to be followed by the filing of originals of said facsimile or electronic mail pages.

DATED: Honolulu, Hawai'i, October \_\_\_\_, 2009.

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MICHAEL H. LAU  
YVONNE Y. IZU  
SANDRA L. WILHIDE

Morihara Lau & Fong LLP  
Attorneys for Wai'ola O Moloka'i, Inc.

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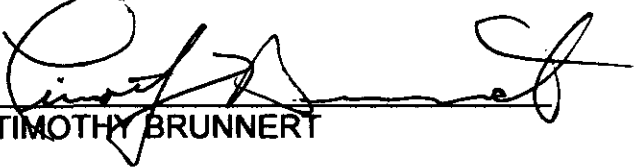
MARGERY S. BRONSTER  
JEANNETTE H. CASTAGNETTI

Bronster Hoshibata  
Attorneys for the County of Maui

---

JON S. ITOMURA  
LANE H. TSUCHIYAMA

Attorneys for the Division of Consumer  
Advocacy, Department of Commerce  
and Consumer Affairs



---

TIMOTHY BRUNNERT

President, Stand For Water

---

ANDREW V. BEAMAN

Chun Kerr Dodd Beaman & Wong, LLLP  
Attorney for Molokai Properties Limited

APPROVED AND SO ORDERED THIS \_\_\_\_\_,  
at Honolulu, Hawaii.

PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By \_\_\_\_\_  
Carlito P. Caliboso, Chairman

By \_\_\_\_\_  
John E. Cole, Commissioner

By \_\_\_\_\_  
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

\_\_\_\_\_  
Ji Sook Kim  
Commission Counsel



**CERTIFICATE OF SERVICE**

The foregoing Stipulated Procedural Order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

CATHERINE P. AWAKUNI  
Executive Director  
Department Of Commerce And Consumer Affairs  
Division Of Consumer Advocacy  
335 Merchant Street, Room 326  
Honolulu, Hawaii 96813

MICHAEL H. LAU, ESQ.  
YVONNE Y. IZU, ESQ.  
SANDRA L. WILHIDE, ESQ.  
Moriwara Lau & Fong LLP  
400 Davies Pacific Center  
841 Bishop Street  
Honolulu, Hawaii 96813

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ANDREW V. BEAMAN, ESQ.  
Chun Kerr Dodd Beaman & Wong, LLP  
Topa Financial Center  
Fort Street Tower  
745 Fort Street, 9<sup>th</sup> Floor  
Honolulu, HI 96813

**EXHIBIT "A"**  
**STIPULATED REGULATORY SCHEDULE**  
**WAI'OLA O MOLOKA'I, INC. ("WOM")**  
**Docket No. 2009-0049**

	<b>DATE</b>	<b>PROCEDURAL STEPS</b>
1.	June 29, 2009	Amended Application Filed at Commission
2.	September 3, 2009	Public Hearing
3.	Thursday, November 12, 2009	Parties' Submission of Information Requests ("IRs") to WOM
4.	Wednesday, November 25, 2009	WOM's Response to IRs
5.	Wednesday, December 9, 2009	Parties' Submission of Supplemental IRs to WOM
6.	Wednesday, December 23, 2009	WOM's Responses to Supplemental IRs
7.	Friday, January 8, 2010	Filing of Direct Testimonies and Exhibits by Parties
8.	Friday, January 22, 2010	WOM's Submission of IRs to Parties on Direct Testimonies and Exhibits (as applicable); Settlement Discussions (if any)
9.	Monday, February 1, 2010	Party Responses to IRs on Direct Testimonies
10.	Wednesday, February 10, 2010	WOM's Rebuttal Testimony(ies) to Direct Testimonies and Exhibits <sup>1</sup>
11.	Friday, February 19, 2010	Party Submission(s) of Rebuttal IRs to WOM
12.	Friday, February 26, 2010	WOM's Responses to Rebuttal IRs
13.	Thursday, March 4, 2010	Settlement Letter/Agreement (if any) to Commission
14.	Thursday, March 11, 2010	Simultaneous filing of Statement of Probable Entitlement if no Settlement Pre-Hearing Conference
15.	Friday, March 19, 2010	WOM and Parties Responses, if any, to Statement of Probable Entitlement
16.	To be determined by Commission	Pre-Hearing Conference
17.	To be determined by Commission	Evidentiary Hearing (if no settlement)
18.	No later than April 29, 2010	Interim Decision and Order <sup>2</sup>

<sup>1</sup> The parties reserve the right to, collectively or individually, engage in settlement discussions at any time on any and/or all disputed issues that may exist between any of the parties' respective positions in the subject docket. In the event a settlement is reached by all or any of the parties, the respective parties will notify the Commission and any other parties accordingly and request such changes to the remaining procedural steps as may be applicable or prudent under the circumstances.

<sup>2</sup> Pursuant to Order Regarding Completed Amended Application and Other Initial Matters, filed on July 31, 2009, the Commission determined, among other things, that the date of the completed Amended Application, filed on June 29, 2009, is June 29, 2009. As such, under HRS § 260-20(a), WOM is entitled to a final decision on its Amended

	<b>DATE</b>	<b>PROCEDURAL STEPS</b>
19.	3 weeks after transcript completed and filed with Commission	Simultaneous Post-Hearing Briefs from WOM and Parties (as applicable)
20.		Decision and Order

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Application no later than March 29, 2010 (aka, nine-month final decision and order) and, at the very minimum, interim relief by April 29, 2010 if the Commission determines based on the evidentiary record before it that WOM is probably entitled to such interim relief. The Commission may postpone its interim rate decision for thirty days (i.e., by May 29, 2010) if the Commission considers the evidentiary hearings incomplete. By stipulating to this regulatory schedule, WOM does not waive its right to a nine-month final decision and order and interim relief within ten months or, if deemed necessary, eleven months consistent with the requirements set forth under HRS § 269-16(d). In that connection, the parties will make every effort to expedite the discovery process, if possible, to provide the Commission with a sufficient and complete evidentiary record to render at least an interim relief decision within the ten-month or, if deemed necessary, eleven-month period.